IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 296 of 2000.

Decided on : October 17, 2006.

New India Assurance Company Ltd. .....Appellant.

VERSUS

Smt. Chanan Kaur & ors. .....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. K.D.Sood, Advocate with Mr. Sanjeev Sood, Advocate.

For the Respondents : Mr. Naveen Bhardwaj, Advocate, for Respondents No 1 to 4.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents No. 1 to 4 claiming themselves to be the dependents of late Sh. Major Singh, filed a petition, under Section 166 of the Motor Vehicles Act, seeking award of compensation for the death of said Major Singh in an accident involving a tractor-trolley owned by respondent Harbhajan Singh. At the time of the occurrence of the alleged accident, the tractor was being driven by Madan Lal. The present appellant was impleaded, because the tractor was

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Whether the reporters of the local papers may be allowed to see the Judgment?

insured with it for third party risk. It was alleged that the deceased was on board the trolley of the tractor when the accident took place. The cause of accident was rash or negligent driving of the tractor. Respondents No. 1 to 4 claimed that they were dependant upon the deceased for their livelihood.

3. The owner and the driver of the tractor did not put in appearance despite service. So they were ordered to be proceeded against ex-parte. Present appellant appeared and filed a written reply, in which it was denied that cause of accident was rash or negligent driving of the tractor. It was alleged that the deceased was on board the trolley as an unauthorized passenger and hence the insurer was not liable as the policy did not cover the risk of a passenger. Also it was alleged that the person who was driving the tractor at the relevant time did not possess a valid and effective driving licence. The Tribunal, after holding inquiry, held that the cause of the accident was rash or negligent driving of the tractor-trolley by its driver. Claimants- respondents were held entitled to an amount of Rs. 2,34,600/-, by way of compensation.

4. Appellant's contention that the vehicle was being driven by a person, who did not possess a valid licence and that the deceased was an unauthorized passenger, did not find favour with the Tribunal. Consequently, the appellant was ordered to pay the amount of compensation together with interest.

5. Aggrieved by the award, the Insurance Company has filed the present appeal. Learned counsel representing the appellant has submitted that the deceased was an unauthorized passenger and

his risk was not covered by the policy, and therefore, the liability should not be fastened upon it (the appellant).

6. I have gone through the record. The claimants examined a witness, namely PW 2 Banarsi Dass, who stated that he alongwith the deceased was on board the trolley of the tractor and both of them had been engaged as labourers. No evidence had been adduced by the appellant in support of its claim that the risk of a labourer engaged by the insured and being carried in the trolley of the tractor was not covered. As a matter of fact, the appellant did not produce the insurance policy for the reasons best known to it. An opportunity was given to the appellant to adduce evidence, but it chose not to avail of that opportunity. In other words, no evidence was led by the appellant in support of its plea that the deceased was an unauthorized passenger. On the contrary, the evidence adduced by the claimants in the form of testimony of PW 2 Banarsi Dass, is suggestive of the fact that the deceased was not an unauthorized passenger.

7. For the foregoing reasons, I find no merit in this appeal. The same is therefore, dismissed.

October 17, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**